

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: September 17, 2003
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

A. CALL TO ORDER

Chairperson Peter T. Young called the meeting of the Commission on Water Resource Management to order at 9:05 A.M.

B. ROLL CALL

The following were in attendance:

MEMBERS: Mr. Peter T. Young, Dr. Chiyome Fukino, Ms. Meredith Ching, Ms. Stephanie Whalen, Mr. James Frazier

STAFF: Ernie Lau, Dean Nakano, Roy Hardy, Ed Sakoda, Glenn Bauer, Lenore Nakama, Charley Ice, Ryan Imata, Faith Ching, Dean Uyeno, David Higa, Neal Fujii, and Kevin Gooding

EXCUSED: Mr. Clayton Dela Cruz

COUNSEL: Yvonne Izu

OTHERS: David Brockman, Rebecca Alakai, Rosemary Liu, and Steve Anthony

Chairman Young introduced and welcomed our new Commissioner, Stephanie Whalen.

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties.

C. ACCEPTANCE OF AGENDA

Deputy Director Lau suggested to the Commission that we take up item G5, the "Request to Enter into an Agreement for Professional Services to Develop County-Based Drought Mitigation and Response Strategies" after item H2, as it will flow better.

D. APPROVAL OF MINUTES –

On lacking the appropriate people for the approval of the prior meeting minutes, we will defer that to a future meeting.

E. CORRESPONDENCE/ANNOUNCEMENTS by Deputy Director Ernest Lau

Deputy Director Lau stated that we were advertising for the seventh Water Commissioner position that was signed into law by the Governor in July 2003 under Act 184. The seventh Water Commissioner will have substantial experience in traditional Hawaiian water resource management techniques, and traditional Hawaiian water usage. The advertisement will go out on September 21, 2003 and the closing date for applications is October 13, 2003. The applications will then be forwarded to a nomination committee and reviewed.

Deputy Lau also mentioned the letter received from the Disaster Prevention Research Institute at Kyoto University by Jason Levy, PhD. The letter is inviting us to participate in a proposed 2005 AWRA (American Water Resource Association Conference) here in Honolulu, titled “Watershed Management for Maximum Sustainable Use”. They’ve invited us to serve as the technical program committee chair for that conference. I will be talking to the University of Hawaii, Water Resource Research Center to see if they would like to co-chair that committee with us.

Deputy Lau announced that at times he may not be able to return calls or emails in a timely manner. Aside from supervising the Commission’s staff of twenty-two people, the Chairman has assigned other divisions for his oversight. That includes the Engineering Division, Aquatic Resources Division, Conservation and Resources Enforcement Division and our Boating and Ocean Recreation Division. Deputy Lau also wanted to make the Commission aware that the staff sometimes wears two hats, for example, Roy Hardy serves as the defacto head of the Data Processing Unit for the Department of Land and Natural Resources, Dean Nakano is the lead on our geothermal efforts on the Big Island, Glenn Bauer is our lead on rock slides involving State unimproved lands and Kevin Gooding assists. We do have a full plate and ask for your patience if we don’t get back to you right away.

F. OLD BUSINESS

Mr. Ryan Imata gave a status report on the McCandless Pipeline Water Use Permit. As part of the Waiahole contested case hearing decision and order, all of the users of the McCandless Pipeline in Waiahole Valley were required to submit applications for water use permits within one year of the issuance of the D & O, or by December 28, 2002. Staff held workshops on February 19 and March 22, 2002 to help the residents comply with the Commission’s deadline. Only two applications were submitted by the deadline although staff knew there were more than two users of the Pipeline. Staff met with HCDCH on May 6, 2003 and obtained a map and table showing every parcel located in the Waiahole Ag

Park. The Commission took action on the two submitted applications at the May 21, 2003 Commission Meeting and deferred action on the applications pending the submission of a more comprehensive application by July 31, 2003. Staff then contacted every parcel owner or tenant in the valley via a mass mailer and found out that there were about twenty-two people that claimed that they had an existing use as of the time of designation of the Windward Aquifer Sector.

Staff then met with the users on July 24, 2003, to explain the requirements for the Water Use Permit application and to answer any questions that the users had. Staff then received a single application for a Water Use Permit on July 30, 2003, listing all of the parties who said that they had an existing use of the McCandless Pipeline. The application is currently incomplete pending the signature of the City and County of Honolulu, Department of Planning and Permitting. Staff feels that given the time constraint and the difficulty in coordinating a single application among twenty-two users, that the applicant group made a good faith effort to meet the deadline.

Upon submission of the completed application and appropriate review, Staff will bring the application to the Commission for appropriate action. If the signatures are obtained by the end of September, staff will probably be presenting the applications to the Commission for action in the December meeting, assuming there are no objections to these applications.

Deputy Director Ernest Lau recognized Ryan Imata's extraordinary efforts in getting every tenant and owner to apply for a Water Use Permit through his mail out and a personal phone call to each. Ryan also held a meeting at the Waiahole Elementary School for about forty people. He got the group to reach an agreement to submit a single application. He wanted to recognize the hard work of Ryan Imata of getting this done.

G. NEW BUSINESS

1. Application for an After-the-Fact, Stream Channel Alteration Permit, Hakalau Stream, North Hilo, Hawaii TMK: 3-1-001:002

PRESENTATION OF SUBMITTAL: Ed Sakoda

The applicant is Certified Coatings of California, Inc., represented by Mr. David Brockman.

There are three issues that must be addressed in this submittal. The first is determining whether the work done actually requires a permit, the second is to determine which party is responsible, and the third is to discuss the instream values of this stream. One of our tasks is to protect streams and instream uses.

As far as the permit requirements, the use of heavy equipment such as bulldozers, bob cat loader, clamshell dragline etc. generally affects certain instream uses such as water quality and fish and wildlife habitats. Therefore, the use of heavy equipment generally requires a

permit from the Commission. There are exceptions, for instance, when the City and County or private users use a bulldozer to remove sand from the mouth of a stream, we do not require a SCAP because moving sand will not degrade the water quality whereas removing silt you cloud the water. In this case, heavy equipment was used and raised concerns about the work affecting the habitat of the different species. Because heavy equipment was used, we determined that an after - the - fact SCAP was required.

Staff also considered it the responsibility of the landowner as well as Certified Coatings for the dredging. The land is owned by Mr. Steven Wolf and in May 1996, the Commission fined Mr. Wolf \$250 for grading Waiehu Stream without a Stream Channel Alteration Permit.

RECOMMENDATION:

That the Commission:

- A. Find Certified Coatings of California, Inc. in violation of Hawaii Revised Statutes §174C-71 for not obtaining a stream channel alteration permit for dredging Hakalau Stream.
- B. Impose a fine of \$250 to Certified Coatings of California, Inc. for a first-time violation of Hawaii Revised Statutes §174C-71, in accordance with the Commission's Penalty Policy Guidelines;
- C. Provide a written warning to Certified Coatings of California, Inc. that future violations of the Hawaii Water Code by Certified Coatings, Inc. may be subject to fines up to \$1000 per day per violation as provided in Hawaii Revised Statutes §174C-15.
- D. Approve the after-the-fact stream channel alteration permit for the dredging to Certified Coatings of California, Inc. subject to the standard stream channel alteration permit conditions in Exhibit 8.
- E. Issue a written warning to the landowner, Mr. Steven Wolf, indicating that future Hawaii Water Code violations on property he owns or leases may be considered repeat violations subject to fines up to \$1000 per day per violation as provided in Hawaii Revised Statutes §174C-15.

Commissioner Whalen asked when you have a permit and a landowner and company are involved, does the owner have to sign off on the permit? Staff stated that the owner must sign off on the application. In this case, Mr. Wolf would have known if in fact a permit had been applied for this dredging? Staff stated that he did sign it but in this case it was done after-the fact. The work was done before the permit was issued and he was not aware. Staff believes that Mr. Wolf does not think that a permit is necessary. Mr. Wolf would not have known that we consider a permit necessary if you have a piece of heavy equipment in the stream.

Commissioner Whalen also asked how a person is supposed to know about our rules? She was advised that they should ask. With more out of state companies being awarded contracts the departments should be working together more than they have in the past.

Deputy Director Lau stated that we have a website that's available with all the information and forms. Mr. Lau also explained that a local engineering firm was contracted should be knowledgeable about the permitting requirements described in the spec/bid package, that design would be available to the contractor. The companies that do business in Hawaii should learn about the laws or utilize resources locally such as consultants, engineering firms or architectural firms to make them aware of the permitting requirements.

Commissioner Frazier stated that, regarding Recommendation E, DOT is the one that really works with the contractor, why isn't DOT given notification instead of Mr. Wolf? DOT should be held accountable for contracts that they have with bridges and streams.

Commissioner Ching asked if we give written notices to people, that the next time that they violate you could subject them to a higher fine? Staff said that is correct, however, in the case of Mr. Wolf's previous violation, we did not. We did not have that standard condition yet and Mr. Wolf's previous violation was in 1996.

Mr. David Brockman, the applicant's representative took the stand and apologized for the oversight. He stated that Steven Wolf is not the responsible party because he did not do the work. It is in our agreement that we would be responsible for permits, fees, and things of that nature. We did check with DOT and Hawaiian Dredging and the feedback we received was that permits for cleaning up culverts were not necessary. The rocks that rolled down over time were three foot in diameter and the only way to remove them would be through some kind of equipment.

Commissioner Frazier stated that when working with contractors from out – of - state that there are rules that should be reviewed. That is the reason for the recommendation. Chairman Young stated perhaps it should be a reminder instead of a warning.

Deputy Director Lau stated that we could send a reminder letter to DOT reminding them that heavy equipment does constitute a need for a SCAP except for the clearing of stream mouths. Mr. Lau stated that we would forward a letter to DOT as well as Hawaiian Dredging. This would be a reminder letter not a warning letter.

MOTION: (Ching/Whalen)
To approve the submittal.
UNANIMOUSLY APPROVED.

2. Cooperative Agreement with U.S. Geological Survey for Statewide Hydrologic Data Collection and Water Resource Investigations for Fiscal Year (FY) 2004

PRESENTATION OF SUBMITTAL: Glenn Bauer

Mr. Bauer explained that every year at this time we enter into a cooperative agreement with the U.S. Geological Survey. This agreement has been with the state or the territory for almost 95 years. It started in 1909 with the first agreement with twelve streams that were gaged continuously and by 1914 eighty-seven streams were gaged. This program grew until 1966 when one hundred ninety-seven streams were being gaged continuously plus rain gages and other studies. Over time, the USGS has produced some very valuable documents.

In 1972, a ground-water data collection program began to gather baseline data. There were one hundred seventy wells and over time the wells and some of the stream gages were discontinued due to either economic problem, stream diversions upstream of the gage or problems with the gage and these gages were discontinued.

Exhibit 2 shows the changes that happened over time. Under this agreement the USGS collects basic hydrologic data. The Commission and the USGS share the cost equally. The number of hydrologic data points in this cooperative agreement has changed. For this Fiscal Year 2004, we will be funding thirty-nine stream gages, taking water level measurements from seventy-one wells, monitoring spring flow discharge in the Pearl Harbor and Molokai. They will also be looking at data analysis of stream flow measurements in the Waiahole area. The major changes to the program this year is elimination of four stream gages, eleven wells and four rain gages that constitutes a reduction of \$42,000 on both sides or a total of \$84,000.

A total of fourteen real time continuous stream gage stations and rain gages are funded. The USGS has some very good websites. Data can be downloaded for every stream gage that was ever operating in Hawaii. The Cooperative Program runs from October 1, 2003 to September 30, 2004 and this coincides with the Federal Fiscal Year. The Commission's share this year will be \$373,000 that will be covered under the department's LNR 404, Water Resource Program budget.

Exhibit 2 shows the major changes that have occurred over the past seven years. Staff continues to work with the USGS to provide a comprehensive statewide groundwater/surface water-monitoring program.

There are several other ends that we would like to improve and one is the better coordinating of water resource data collection and two, to make data readily available on the Internet between agencies.

RECOMMENDATION:

That the Commission approve the cooperative agreement between the Commission and the U.S. Geological Survey, and authorizes the Chairperson to execute the appropriate documents.

Final contract execution shall be contingent upon receiving the Governor's approval in accordance with Executive Memorandum No. 01-06 and approval of the contract by the Department of the Attorney General.

Deputy Director Lau stated that this would be an opportunity, as we have had dialogue through the drought efforts with the National Weather Service, USGS, ourselves and the local counties and how we can improve the collection of data for knowledge of our resource management and for drought mitigation. We'll continue dialogue and try to work together.

Steve Anthony, USGS Associate District Chief, stated some important aspects of their program that they have with the Water Commission now is to incorporate the ongoing analysis of the data. Previously the program was collecting the data and making it available. We've since built in a portion for data analysis and interpretation and one aspect of that is to look at the data, where we are collecting it, what changes should be made to better meet issues in the state. Through that effort we've recently published a fact sheet on describing the mechanics of surface water movement. The next phase is looking at trends in surface water flow, in particular, changes relating to drought.

Mr. Anthony acknowledged the interaction with the Commission Staff. He stated that they have provided valuable input in reviewing documents that we produce.

MOTION: (Ching/Whalen)
To approve the submittal.
UNANIMOUSLY APPROVED

3. Stanhope Farms, APPLICATION FOR WATER USE PERMIT MODIFICATION, Stanhope Farms Well (Well No. 3308-02), TMK 6-7-002:006, Existing and New (Domestic, Pasture Irrigation, Diversified Agriculture) Use for 0.055 mgd, Mokuleia Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Lenore Nakama

RECOMMENDATION:

Staff recommends that the Commission approve the issuance of Water Use Permit No. 657 to Stanhope Farms for the reasonable and beneficial use of 0.056 million gallons per day of potable water for domestic, pasture irrigation, and diversified agricultural uses shown in Exhibit 3 from the Stanhope Farms Well (Well No. 3308-02), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Should an alternate permanent source of water be found for this use, the Commission reserves the right to revoke this permit, after a hearing.
2. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty days after the permittee receives notice of the tax map key change.

MOTION: (Ching/Whalen)
To approve the submittal.
UNANIMOUSLY APPROVED

4. DISPUTE RESOLUTION HEARING, Commission to Hear Oral Arguments and, Make a Decision Regarding the Douglas/White Hanawana Stream Intake Dispute (DR-MA03-1)

PRESENTATION OF SUBMITTAL: Ed Sakoda

This is the first dispute resolution that the Commission has and also the first that was assigned to a hearing officer. Briefly, Capt. Douglas and Mr. White are disputing the location of an intake on Hanawana Stream in Haiku, Maui. After receiving this dispute on a staff level we visited the site and tried to determine what was going on. After hearing both sides staff still could not determine what was happening. In February of this year staff recommended to the Commission that it exercise its jurisdiction pursuant to the Water Codes dispute resolution section to resolve this dispute.

The dispute resolution process will give the parties the opportunity to present their arguments to the Commission. The Commission can review all the evidence and make a determination. In lieu of the whole Commission going to Maui, especially in these times of fiscal hardship, we recommended that the Commission appoint a hearing officer or master to do that work and sort out the truth and reach a preliminary decision. The hearing officer conducts all aspects of the hearing except for the final decision and order, which is made by the Commission.

RECOMMENDATION:

That the Commission approve the hearings officer's proposed D&O, with the modification of Figure 1 as described by Mr. White. The modified Proposed D&O will become the final **LEGAL FRAMEWORK, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER.**

MOTION: (Whalen/Frazier)
To approve the submittal.
UNANIMOUSLY APPROVED

H. REPORTS

1. Maui Activities:

Ed Sakoda talked about an August 28, 2003 field inspection of Wailuku Agribusiness Co., Inc. ditches from Waihee to Waikapu. A slide presentation of Spreckles Ditch Intake on Waihee Stream was made showing the flow of water through the intake. Also in the presentation were slides on the Waihee Ditch.

We took this tour to see where the water was going, to gather flow data information from the Wailuku Agribusiness Company, to see how much water these ditches produced and how much water is being used at the end of the systems.

Roy Hardy, Regulation Branch Chief spoke about attending the Maui County Council Meeting on July 30, 2003. Copies of the Iao Waihee Petition for Designation were distributed listing steps to be taken in applying for permits. Meetings with Maui Mayor Alan Arakawa and staff followed on August 4, 2003. Also in attendance at that meeting were Chairman Peter Young and Yvonne Izu from the AG's Office. At the request of Mayor Arakawa a briefing on the Water Code process was made. It covered areas of what does the designation process mean? How it was going to proceed? Who owns the water? Differences between designated and non-designated areas?

Deputy Director Lau stated how surface water management areas get designated. Discussion on instream flow standards and how does the County manage its own water resources? Deputy Lau stated that we do it under the Water Code through the water use and development plans of the County. This is the County's opportunity to have an impact on how well water resources are managed in the County of Maui. Mr. Lau encouraged that all people do that in all Counties.

Deputy Lau participated in a Watershed Awareness Involvement Workshop sponsored by the Department of Health and Sierra Club. Also on the panel were Earthjustice, Maui Department of Water Supply, and the USGS. Right now there is a lot of interest on Maui regarding the Water Code. Deputy Lau encouraged the public that if they could work together to resolve their water resource issues as a community rather than trying to bring in another layer of state bureaucracy.

2. Drought Issues

Branch Chief of Planning, Dean Nakano and State Drought Coordinator, Neal Fujii gave a PowerPoint presentation to update the Commission on Staff's drought planning activities. The presentation covered the following topics:

- Current Drought Status Statewide
- Governor Lingle's Proclamation on Drought
- Emergency Drought Assistance requests to the U.S. Bureau of Reclamation
- State, County, private sector partnerships to promote water conservation efforts in hotels and resorts (Green Business Program)
- Inter-agency coordination for water resource, conservation and drought planning
- CWRM staff's participation in the State Hazard Mitigation Forum
- Next Steps

Deputy Lau acknowledged Honolulu Board of Water Supply for financing the initial publication of the hotel water conservation flyers. Also acknowledged was Tiffany Mathias from the CWRM staff who did all the graphics and layout along with Dean

Nakano, Branch Chief of Planning, Neal Fujii, State Drought Coordinator and Dean Uyeno who helped out on presentations. Mr. Lau commended a great team who did this work in house.

Another effort that Deputy Lau pointed out was making sure that we coordinate with the local Counties. We did have a coordination meeting with the Honolulu Board of Water Supply and senior management to make sure that we understand where they are going in water conservation and working together. We issued a letter to all the non - Board of Water Supply well owners requesting voluntary cut back of water usage by 10% as part of an overall coordinated effort on Oahu.

G. NEW BUSINESS

5. Request to Enter Into an Agreement for Professional Services, To Develop County-Based Drought Mitigation and Response Strategies

PRESENTATION OF SUBMITTAL: Neal Fujii

We were able to receive FEMA grant funding for this project. What we want to do is go out into the community and establish local Drought Committees on each island. Our goal will be to bring together the different sectors, Water Departments on each island, agriculture, environmental, public health and safety sectors and establish local committees to develop County – based Drought Mitigation Strategies.

Mr. Fujii stated that they want the counties to plan and implement preparedness measures rather than emergency response actions to drought.

RECOMMENDATION:

Staff recommends that the Commission authorize the Chairperson to enter into an agreement for professional services to develop County-Based Drought Mitigation and Response Strategies. Subject to Governor's approval, final consultant selection and contract execution will be done in accordance with Chapter 103D, Hawaii Revised Statutes and Chapter 3-122, Hawaii Administrative Rules.

MOTION: (Ching/Whalen)

To approve the submittal.

UNANIMOUSLY APPROVED

3. Revision to Hawaii Well Construction & Pump Installation Standards

Glenn Bauer and Kevin Gooding made the presentation. A meeting was held statewide September 15, 2003 with the well drillers and counties to discuss the Well Construction & Pump Installation Standards.

Acknowledgment of Commissioner Frazier facilitating the Big Island group for the videoconference held between four islands and the DOH, it went very well. Mr. Bauer encouraged those in the audience to check our website.

4. Interagency Coordination

Deputy Lau explained the overlapping of a lot of agencies, for example DLNR and DOH, in particular the Environmental Health Division. We facilitated a meeting where we are going to work together to look at the overlaps and how we can work better together. I want to thank Dr. Fukino and Deputy Director Larry Lau. We had a great meeting and will follow up with focus group meetings on specific topics; stream issues, and surface water.

5. Homeland Defense

Deputy Lau noted that the Water Commission is not only involved in water issues but also those of security. Another multi-agency meeting was set up. We called it the Water Information Security Meeting. We're looking at data that various agencies has that could be deemed sensitive since September 11 occurred. There was representation from the Navy, Army, DOH, USGS, all County Water Departments on line via conference call, Civil Defense and the Attorney General's Office. We're trying to use technology to our advantage so people do not have to fly to each island.

Deputy Lau discussed the DLNR ICS Structure that stands for Incident Command System. What we're endeavoring to do here at DLNR where we have ten different divisions is to

create an Incident Command Structure during times of any kind of emergency or terrorism event where we can fall back into this command structure.

Commissioner Whalen asked if the Department of Agriculture would be involved in these focus meetings. Deputy Lau mentioned that a meeting was held the day before with Chairman Sandy Kunimoto from the DOA and the Hawaii Farm Bureau and ourselves to see how we could better work together on drought response, legislation and other issues.

Chairman Young stated that on a Cabinet level with DLNR, DOH, DOT, AG, DBEDT, DHHL, Defense and Human Services are going to be working together cooperatively on some overlapping issues. He stated that he's met with all the County Mayors, Planning Directors and Water Managers about how that group of state agencies can interact better with the county agencies.

I. TOPICS FOR FUTURE COMMISSION MEETINGS

Chairman Young stated that he will not be able to attend the October 22, 2003 Commission Meeting.

Deputy Lau mentioned that revisions to our permitting process would be brought back, how we can streamline and make it more efficient, easier to use and understand. Also, a report compiled by Glenn Bauer, State geologist, "A Study of Ground-Water Conditions in North and South Kohala on the Big Island" would be presented at the next Commission meeting. The Maui Department Water Supply may be doing a presentation on their water use and development plan at a later date and will brief us on their approach.

J. NEXT COMMISSION MEETINGS

1. November 19, 2003
2. December 17, 2003

K. UPCOMING EVENTS

L. ADJOURNMENT

The meeting was adjourned at 11:57A.M.

Respectfully submitted,

PAULYNE ANAKALEA
Secretary

APPROVED AS SUBMITTED:

ERNEST Y.W.LAU
Deputy Director